

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Michael Smith,  
 Plaintiff

v.

Christy Craig-Rohan, et al.,  
 Defendants

Case No.: 2:18-cv-02207-JAD-VCF

**Order Granting Motion to Dismiss**

[ECF No. 29]

Three years ago, I screened pro se plaintiff Michael Smith’s complaint, in which he alleged that defendant correctional-facility-healthcare-provider NaphCare forcibly medicated him using psychotropic drugs, and I found that he had pled a colorable Fourteenth Amendment claim for violation of his due-process rights.<sup>1</sup> NaphCare now moves to dismiss that claim, contending that Smith cannot show that it has a policy, practice, or custom of forcibly medicating incarcerated patients—a requirement for holding private entities like NaphCare liable under 42 U.S.C. § 1983.<sup>2</sup> Smith responds with only a conclusory statement that NaphCare does in fact have such a policy or custom.<sup>3</sup> Because I find that Smith’s allegations fall short of stating a claim against NaphCare, I grant the motion to dismiss. But because I am not yet convinced that Smith cannot cure this deficiency, I do so with leave to amend.

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<sup>1</sup> ECF No. 6.

<sup>2</sup> ECF No. 29; *see Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1138–39 (9th Cir. 2012).

<sup>3</sup> ECF No. 34 at 2.

## Discussion

### I. Motion-to-dismiss standard

Federal pleading standards require a plaintiff's complaint to include enough factual detail to "state a claim to relief that is plausible on its face."<sup>4</sup> This "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation";<sup>5</sup> plaintiffs must make direct or inferential factual allegations about "all the material elements necessary to sustain recovery under *some* viable legal theory."<sup>6</sup> A complaint that fails to meet this standard must be dismissed.<sup>7</sup>

But federal courts must also interpret all pleadings "so as to do justice."<sup>8</sup> And the Supreme Court has consistently held that pro se pleadings are "to be liberally construed."<sup>9</sup> A pro se complaint, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears beyond doubt that the plaintiff[s] can prove no set of facts in support of [their] claim which would entitle [them] to relief."<sup>10</sup> If the court grants a motion to dismiss for failure to state a claim, leave to amend should be granted unless it is clear that the deficiencies of the complaint cannot be cured by amendment.<sup>11</sup>

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<sup>4</sup> *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

<sup>5</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

<sup>6</sup> *Twombly*, 550 U.S. at 562 (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984)).

<sup>7</sup> *Id.* at 570.

<sup>8</sup> Fed. R. Civ. P. 8(e).

<sup>9</sup> *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (citation omitted).

<sup>10</sup> *Id.* (cleaned up).

<sup>11</sup> *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992).

1 **II. Smith fails to state a plausible claim against NaphCare.**

2 The Ninth Circuit has held that the municipal-liability framework in the landmark  
 3 Supreme Court case *Monell v. Department of Social Services* establishes the “parameters” of  
 4 § 1983 liability for private entities acting under color of law.<sup>12</sup> Under *Monell*, an entity “may be  
 5 liable under § 1983 for constitutional injuries” that result from “(1) an official policy; (2) a  
 6 pervasive practice or custom; (3) a failure to train, supervise, or discipline; or (4) a decision or  
 7 act by a final policymaker.”<sup>13</sup> An entity cannot be held vicariously liable for its employees’  
 8 actions simply “because it employs someone who is found to have violated a person’s  
 9 constitutional rights”; the plaintiff must show “*deliberate* action attributable to the [private  
 10 entity] that directly caused a deprivation of federal rights.”<sup>14</sup> A claim that fails to plausibly  
 11 allege facts to support any of the four theories of *Monell* liability must be dismissed.<sup>15</sup>

12 Smith alleges that NaphCare violated his due-process rights by giving him the mind-  
 13 altering, psychotropic drugs oxcarbazepine and Remeron against his will and without  
 14 prescription for eleven months.<sup>16</sup> The Supreme Court has long held that “an individual has a  
 15 constitutionally protected liberty ‘interest in avoiding involuntary administration of antipsychotic  
 16 drugs’—an interest that only an ‘essential’ or ‘overriding’ state interest might overcome.”<sup>17</sup>

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18 <sup>12</sup> *Tsao*, 698 F.3d at 1138–39; see *Monell v. Dep’t of Soc. Svcs.*, 436 U.S. 658 (1978).

19 <sup>13</sup> *Horton v. City of Santa Maria*, 915 F.3d 592, 602–03 (9th Cir. 2019).

20 <sup>14</sup> *Id.* (cleaned up).

21 <sup>15</sup> See *Twombly*, 550 U.S. at 570.

22 <sup>16</sup> ECF No. 1-1 at 6; ECF No. 6 at 5–6.

23 <sup>17</sup> *Sell v. United States*, 539 U.S. 166, 178–79 (2003) (citing *Riggins v. Nevada*, 504 U.S. 127, 134–35 (1992); see also *Riggins*, 504 U.S. at 135 (citation omitted) (“[F]orcing antipsychotic drugs on a convicted prisoner is impermissible absent a finding of overriding justification and a determination of medical appropriateness. The Fourteenth Amendment affords at least as much protection to persons the [s]tate detains for trial.”)).

1 NaphCare argues that it cannot be held liable even if its actions violated Smith’s constitutional  
 2 right to be free from involuntary medication because Smith has not alleged, and cannot show,  
 3 that the violation occurred “as a result of a policy, decision, or custom promulgated or endorsed  
 4 by NaphCare.”<sup>18</sup> Smith responds that NaphCare forcibly medicated him based on “erroneous  
 5 information” and did so with “support[]” from “the policies, customs, and practices of NaphCare  
 6 and enforced by NaphCare’s medical personnel.”<sup>19</sup> As a result, he “suffered from extreme  
 7 headaches, blurry vision, and substantial hallucinations.”<sup>20</sup> The allegations in Smith’s complaint  
 8 are insufficient to sustain his claim, and his only response to NaphCare’s *Monell*-liability  
 9 argument is a conclusory statement about its customs and policies that lacks any facts to support  
 10 that conclusion. So I grant NaphCare’s motion to dismiss. But because it isn’t clear at this stage  
 11 that Smith cannot plead sufficient facts to state a colorable claim, I dismiss his claim without  
 12 prejudice and with leave to amend.

### 13 **III. Leave to amend**

14 Smith may amend his complaint to try one more time to provide the allegations necessary  
 15 to state a Fourteenth Amendment claim for forced medication against NaphCare. If Smith  
 16 chooses to file an amended complaint, he is advised that an amended complaint replaces the  
 17 original complaint, so the amended complaint must be complete in itself.<sup>21</sup> He should file the  
 18 amended complaint on this court’s approved prisoner-civil-rights form, and it must be entitled  
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20 <sup>18</sup> ECF No. 29 at 4–5.

21 <sup>19</sup> ECF No. 34 at 2.

22 <sup>20</sup> *Id.*

23 <sup>21</sup> See *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (holding that “[t]he fact that a party was named in the original complaint is irrelevant; an amended pleading supersedes the original”).

1 “First Amended Complaint.” Smith must follow the instructions on the form. In each count, he  
2 must allege true *facts* sufficient to show *every* element of his claims. His claim against  
3 NaphCare, for example, would need to contain facts sufficient to show that its alleged violation  
4 of his rights was a product of “(1) an official policy; (2) a pervasive practice or custom; (3) a  
5 failure to train, supervise, or discipline; or (4) a decision or act by a final policymaker.” Just  
6 saying so will be insufficient because collective, vague, speculative, or conclusory allegations  
7 will not be enough. Smith may not amend the complaint to add unrelated claims against other  
8 defendants or re-plead other already-dismissed claims. He must file the amended complaint by  
9 **August 26, 2022.**

#### 10 **Conclusion**

11 IT IS THEREFORE ORDERED that defendant NaphCare’s motion to dismiss  
12 **[ECF No. 29] is GRANTED.** Smith’s forced-medication claim against NaphCare is **dismissed**  
13 **without prejudice and with leave to amend.**

14 IT IS FURTHER ORDERED that the Clerk of Court is **directed to SEND** Smith the  
15 approved form for filing a § 1983 prisoner complaint and instructions for the same. If Smith  
16 chooses to file an amended complaint, he must use the approved form and he must write the  
17 words “First Amended” above the words “Civil Rights Complaint” in the caption. If he does not  
18 file an amended complaint by **August 26, 2022**, this action will proceed immediately on his  
19 remaining failure-to-train claim against defendant Philip Kohn only.

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21   
22 U.S. District Judge Jennifer A. Dorsey  
23 July 27, 2022